CASE TRANSLATION: FRANCE

CASE CITATION:
Union des Etudiants Juifs de France and J'accuse! … action internationale pour la justice v Twitter, Inc. (with voluntary interventions by Le Mouvement Contre Le Racisme et pour L'Amitié Entre Les Peuples, Association SOS Racisme-Touche pas a mon pote and La Ligue Internationale Contre Le Racisme et L'Antisémitisme)

CASE NUMBER:
RG 13/50262; 13/50276

NAME AND LEVEL OF COURT:
Tribunal de Grande Instance de Paris

DATE OF DECISION:
24 January 2013

MEMBERS OF THE COURT:
Anne-Marie Sauteraud, Vice-President, Estelle Layfaye, assistant

LAWYERS FOR THE CLAIMANT:
Me Stéphane Lilti

LAWYERS FOR THE DEFENDANT:
Me Alexandra Neri

Host; identity; Twitter; responsibility; illegal content; author; Data Protection Law; communication; data; injunction; Article 145 of the CPC; French law; enforcement; jurisdiction

We, President

After hearing the parties or their counsel appearing,

Given the assignment issued on 29 November 2012 against the company Twitter Inc., at the request of Union des Etudiants Juifs de France (UEJF) and J'accuse! … action internationale pour la justice (AIPJ) who ask:

- visa section II-6 of the Act of 21 June 2004 on confidence in the digital economy and the alternative of article 145 of the Code of Civil Procedure,

➢ to order the company Twitter Inc. to provide them with the data listed in the decree 2011-219 of 25 February 2011 likely to enable the identification of any person who has contributed to the creation of clearly illegal tweets, in accordance with the notification of 23 October 2012,

- visa section 6-I.8 of the Law of 21 June 2004 on confidence in the digital economy and alternative articles 808 and/or 809 paragraph 1 of the Code of Civil Procedure,

➢ to order the company Twitter Inc. to implement in the context of the French platform service Twitter Inc. a platform easily accessible and visible to any person wishing to bring knowledge of illegal content falling within the scope of defending crimes against humanity and incitement to racial hatred,

- to match these injunctions of a fine of €10,000 per day of delay and infringement of the delivery of the binding order of minutes,

- order the defendant to pay each of the applicants the sum of €1,500 under article 700 of the Code of Civil Procedure,

Given the assignment issued on 20 December 2012, the company Twitter France, at the request of Union des Etudiants Juifs de France (UEJF) and J'accuse! … action internationale pour la justice (AIPJ), who demand:

- visa section 6-I.8 of the Law of 21 June 2004 on confidence in the digital economy and alternative articles 808 and/or 809 paragraph 1 of the Code of Civil Procedure:

➢ To order the company Twitter France, jointly with the company Twitter Inc. to implement in the context of the French platform service Twitter Inc. a platform easily accessible and readable for anyone wishing to bring knowledge of illegal content falling within the scope of the apology of crimes against humanity and incitement to racial hatred,

- to impose the injunction of a fine of €10,000 per day of delay and infringement of the delivery of the binding order on minute,

- to order the defendant to pay each of the applicants the sum of €1,500 under article 700 of the Code of Civil Procedure,

Considering the submissions of the hearing on 8 January 2013 by the Union des Etudiants Juifs de France (UEJF) and J'accuse! ... action internationale pour la justice (AIPJ) that maintain their original claims and modify the request call, requesting that it does not begin until the eighth day after service of the order,

Given the voluntary intervention submissions filed at the hearing on 8 January 2013 by Association SOS Racisme-Touche pas a mon pote who has the same demands as those contained in the two assignments,

Given the voluntary intervention submissions filed at the hearing on 8 January 2013 by the Le Mouvement Contre Le Racisme et pour L'Amitié Entre Les Peuples (MRAP), which has the same demands as those contained in the conclusions of the Association l'UEJF and J'ACCUSE, requesting also the credentials of anyone who contributed data to the creation of '*simonfilsestgay*' and '*simafilleramèneunnoir*' and claiming of each defendant the sum of €1,000,

Given the voluntary intervention submissions filed at the hearing on 8 January 2013 by the l'association La ligue contre le racisme et l'antisémitisme (LICRA) for view:

- to order that the companies Twitter Inc. and Twitter France provide, under penalty, the data listed in the decree 2011-219 of 25 February 2011 likely to enable the identification of any person who has contributed to the creation of clearly illegal tweets,

- to order that the companies Twitter Inc. and Twitter France set up in the framework of the French version of the electronic communications service they publish online at https//twitter.com/ and their applications available on smartphone, and any easily accessible and visible platform allowing anyone to inform them of illegal content falling within the scope of the apology of crimes against humanity and incitement to racial hatred,

- to match this last injunction of a fine of €10,000 per day of delay and infringement of the delivery of the binding order of minutes,

- to convict defendants jointly and severally, to pay the sum of €1,500 under article 700 of the Code of Civil Procedure,

Considering the submissions filed at the hearing on 8 January 2013 by the companies Twitter Inc. and Twitter France ask us:

- not to grant the demands formulated against Twitter France,

- to note that French law in this case does not apply, it is a substantive issue that is beyond the judicial power of the court,

- to act that the company Twitter Inc. is committed to provide the data for the identification of the authors of tweets listed in the summons exclusively in connection with an international rogatory commission (mutual legal assistance treaty request) respecting the provisions of the Hague Convention of 18 March 1970 ratified by France and the United States,

- or give notice it agrees to provide the credentials of the author of the tweets in question in the event that this measure is deemed necessary, provided that the applicants proceed to the enforcement of the French court decision through the jurisdiction of California under the law of America,

- to note that the company Twitter is committed within 48 hours of the hearing on 8 January to providing a French version of the notification procedure available at https//support.twitter.com/forms/abusiveuser,

- to dismiss the plaintiffs and intervening voluntary associations of their other requests,

Given the oral submissions by counsel for the parties at the hearing on 8 January 2013, after which they were informed that this decision would be made on 24 January 2013 at 14 hours per provision at the Registry of the Court,

The facts

The company Twitter Inc. is an American company founded in March 2006, with its headquarters in San Francisco, California, and operates a platform for social networking and micro-blogging on the internet with over 500 million users. This service allows registered members to post short messages called 'tweets' to follow the publications of other micro-bloggers and to participate in discussions.

The plaintiffs argue that their vigilant associations were clearly alerted to various illicit tweets grouped under the hashtag *# un bon juif* ('a good jew') then *# un juif mort* ('a dead jew') with violently anti-Semitic messages, contrary to French public order.

By means of registered mail with a return receipt dated 23 October 2012, their lawyer brought to the attention of the company Twitter Inc. pursuant to section 63 of the act of 21 June 2004 on confidence in the digital economy, various tweets that may characterize racial insult and public offences of incitement to discrimination, hatred or violence, national, racial or religious, and racial defamation in public, together with a formal notice to act promptly to remove clearly illegal content. The company Twitter Inc. has complied with this notice.

Meanwhile, the company Twitter France SAS was created and registered on 19 November 2012.

On the procedure

For the proper administration of justice and by reason of their interdependence, it is appropriate to order the junction of assignments undertaken by 29 November and 20 December 2012.

Article 48-1 of the law of 29 July 1881 on the freedom of the press provides amongst other things that '*any association lawfully registered for at least five years from the date of the incident, proposing, through its statutes, [...] combating racism and assisting victims of discrimination based on racial or religious, national, ethnic origin, may exercise the rights granted to the civil party in respect of the offences provided for in articles 24 (paragraph 8), 32 (paragraph 2) and 33 (paragraph 3) of this Act [...].*'

Similarly, the following article has the same rights including statutory organizations proposing to defend the moral interests and honour of the deportees regarding the crime of advocating crimes against humanity.

The main plaintiff associations and voluntary caregivers meet these conditions, they have an incentive to act and their actions are admissible in accordance with article 31 of the Code of Civil Procedure, which is not disputed by the defence.

The communication data would enable the identification of the authors of tweets

As such, the plaintiffs seek the communication of the data listed by decree 2011-219 of 25 February 2011 on the basis of article 641 of the Law of 21 June 2004 on confidence in the digital economy and, alternatively, section 145 of the Code of Civil Procedure.

They argue in particular:

- the American company Twitter Inc. cannot avoid compliance with the enforcement of the law and security applicable to the activity that unfolds in France, namely the exploitation of the French version of the online communication service that it publishes and incidental storage of messages delivered by the recipients of these services,

- the company is established in France in both the legal and economic sense because of the nature of its business and the advertising revenue it provides, it also has an establishment in the French territory by its subsidiary Twitter France,

- the law of 21 June 2004 on confidence in the digital economy in articles 6.I.7, 6.I.8 and 6.2 is a law relating to public policy, safety and security as a protector of civil liberties, and the provisions invoked are criminally punishable,

- the French platform Twitter is intended exclusively for the French public, as evidenced by the language used and the choice of topics,

- that the information sought is essential to the prosecution and to the associations in question intends to take against the perpetrators of tweets before the French courts,

- Twitter Inc. uses tangible and intangible processing located on French territory namely its French subsidiary, the PC users of its services and software therein situated, and to organize the collection and transfer of user data.

For their part, the defendants expose and justify:

- The company Twitter Inc. is only responsible for the operation of the service Twitter from a legal and technical point of view, as it is stated in its terms and conditions it is the sole owner of the domain names, and the hosted content is stored on servers belonging to them located in the United States and is the recipient authorized to receive reports of illegal content,

- the company has only created Twitter France to play a simple role of commercial agency in the context of a marketing mission, and the plaintiffs do not show otherwise.

The company Twitter Inc. denies that it is subject to an obligation to retain data under French law, namely article 6-II of the Law of 21 June 2004 on confidence in the digital economy Implementing Decree No. 2011-219 of 25

February 2011.

Indeed, it rightly points out that article 4 of the Decree provides that '*the retention of data referred to in article 1 shall be subject to the requirements of the law of 6 January 1978 referred to above, including the requirements set out in Article 34, for information security*' and that article 2 of Law No. 78-12 of 6 January 1978 relating to computers, files and freedoms accurate are subject to this law treatments '*whose controller is established on the French territory*' or '*uses processing means located on French territory*.' The company also points out that according to the '*Article 29 Working Group*' which brings together the European data protection authorities, the mere presence on the French territory of a commercial purpose is not enough to make European laws on data protection applicable. It observes that the data are collected and maintained under California law and that it cannot guarantee to be retained beyond what is required by law or have maintained all the data provided by the decree of 25 February 2011.

In response to the opposing argument, it contends that the provisions of the Law of 21 June 2004 on confidence in the digital economy can be described as police law within the meaning of article 3 of the Civil Code. In order to retain this qualification, it should consider the application of the French law as binding without any doubt to safeguard the national socio-economic organization; however the mere fact that non-compliance with certain of its provisions is criminally sanctioned does not allow it to retain the imperative character of the law's application; furthermore it is not seriously argued that without the application of French law, no retention of data would be provided by the law of the foreign state.

In addition, the plaintiffs point out that, under article 5 of the Data Protection Act as amended and article 45 of Directive 95/46 EC on the protection of data, the person responsible remains subject to the French law as long as that person uses processing means located on the French territory (excluding those that are not used only for transit) and the '*Article 29 Working Group*' considers processing means such as personal computers, terminals, servers, but also the use of 'cookies' and similar software.

However, the defendants respond, without being effectively contradicted in this regard – that Twitter never use '*cookies*' to collect and store user identification data and that they are stored on servers in the United States.

Finally, the plaintiffs suggest that the European Commission made public on 25 January 2012 a proposal for a Regulation of the European Parliament and the Council will apply '*to the treatment of personal data belonging to persons concerned who are residing in the territory of Union by a controller who is not established in the Union*', which tends to confirm that such an extension is not yet part of the law.

Ultimately, the plaintiff associations do not demonstrate that the company Twitter Inc. is based in France and used for the data retention issue, material or human, society France Twitter, or any other entity located in the French territory otherwise than for transit purposes.

Given all these factors, it does not appear with the evidence required for interim measures under article 6-II of the Law of 21 June 2004 on confidence in the digital economy and the Decree No. 211-219 of 25 February 2011 are applicable in this case.

It is therefore necessary to consider the first application on the basis of the alternative, that is article 145 of the Code of Civil Procedure, which states that 'If there is a legitimate reason to preserve or to establish, before any legal process, the evidence of the facts upon which the resolution of the dispute depends, legally permissible preparatory inquiries may be ordered at the request of any interested party, by way of a petition or by way of a summary procedure', as observed in an international dispute, the implementation of such measures is subject to French law.

It will be noted in this regard that:

- the Twitter Rules states that 'International users agree to comply with all local laws regarding online conduct and acceptable content';

- Users whose identification is sought are amenable to French criminal law in accordance with article 113-2 of the Criminal Code, the offence is 'deemed to be committed on the territory of the Republic since one of its constituent facts took place on the territory';

- Twitter does not challenge the jurisdiction of the French court or the illegality of messages, when it was immediately granted the request for their removal;

- the company Twitter Inc. is registered under under California law, the conditions of service stating that 'if Twister is contacted by law enforcement agencies, we can work with them and offer help to their investigation.'

Thus, there is a legitimate reason for the organizations involved to obtain communication data identifying the perpetrators of the tweets held by the company Twitter Inc.

Their request will be granted on the basis of article 145 of the Code of Civil Procedure without it being necessary to agree the requirement of the company Twitter Inc. to serve international letters rogatory or procedure of enforcement of the French decision, the plaintiffs having rightly observed that the defendants have no right to pre-judge their strategy in the event of a breach of this decision.

However, the additional request by the MRAP will not be granted in relation to the 'simonfilsestgay' hashtags – this association is not entitled to act to combat homophobia – and 'simafilleramèneunnoir' since the disputed posts are not sufficiently specific.

On the establishment of a platform signaling manifestly illegal content

On the basis of article 6.I.8 of the Law of 21 June 2004 on confidence in the digital economy, and alternatively, articles 508 and/or 809 paragraph 1 of the Code of Civil Procedure, it is requested that the company Twitter Inc. ., jointly with the company Twitter France, set up in the French service platform Twitter Inc. a device easily accessible and visible to any person to bring to the knowledge of illegal content falling within the scope of the apology crimes against humanity and incitement to racial hatred.

The company Twitter Inc. said that this request is moot because it already has available to users a procedure for reporting illegal content.

However, it is rightly replicated by the plaintiffs that the form in question was not available in the French language in any case on the eve of the hearing. They emphasize that it is not easily accessible and visible, it is necessary to click successively on four links, and unlike all the competitors or comparable services, including Facebook, there is no tab available from the active page, and cannot bring to the attention of Twitter manifestly illegal content.

A French version of the form was produced on 8 January 2013, the company is nevertheless ordered to establish a simpler and more complete system. However, no penalty is ordered in this matter since the company Twitter Inc. does not dispute that it must establish such a device and has already begun initiatives in direction.

Finally, the sum of €1,000 is awarded to each of the main plaintiff associations and €500 for each volunteer worker under article 700 of the Code of Civil Procedure.

For these reasons

Acting publicly and contradictory in first instance,

We order the junction of assignments undertaken by 29 November and 20 December 2012,

Receive the voluntary intervention from the Association SOS Racisme-Touche pas a mon pote, Le Mouvement Contre Le Racisme et pour L'Amitié Entre Les Peuples (MRAP) and La Ligue Internationale Contre Le Racisme et L'Antisémitisme (LICRA),

We order the company Twitter Inc. to communicate with the five associations because the data in its possession is likely to enable the identification of any person who has contributed to the creation of clearly illegal tweets,

Say that communication must take place within fifteen days of service of this decision, and under penalty of €1,000 per day of delay after such period,

We reserve the liquidation of the penalty,

As needed if it has not yet finalized, ordain the company Twitter Inc. to implement in the context of the French service platform Twitter Inc. a device that is easily accessible and visible to any person bringing knowledge of illegal content, including falling within the scope of the apology of crimes against humanity and incitement to racial hatred,

Order the company Twitter Inc., to pay each of the two main plaintiffs the sum of €1,000 and the €500 to each of the three plaintiffs who's voluntary intervention has been received, under article 700 of the Code of Civil Procedure,

Surplus reject requests of the parties,

Order the company Twitter Inc. to pay costs.

Made in Paris on 24 January 2013

The President Anne-Marie Anne-Marie Sauteraud

The assistant Estelle Lafaye

With thanks to Frédérique Dalle and François Delerue for making observations on this translation.

The French Twitter Case: a difficult equilibrium between freedom of expression and its limits

By François Delerue[1]

The French Twitter case shows the difficulties experienced by courts, national authorities and companies, in relation to an international activity, and to find an equilibrium between freedom of expression and its limits, notably in the respect of public order. Moreover, it also shows that in a significant number of cases on the Internet, the application of the French law depends on the goodwill of the companies or the authorities of a foreign state.

In the autumn of 2012, there was a wave of tweets on Twitter in French with racist content using the hashtags[2] *#unbonjuif* [a good Jew] or *#unjuifmort* [a dead Jew]. The tweets were contrary to the French public order.

On the 23 October 2012, a number of French associations acting against racism requested Twitter to remove the tweets. The associations based their action on the provisions of article 6.I.7 of the act of 21 June 2004 on confidence in the digital economy (LCEN).[3] Indeed, according to article 6.I.2 of LCEN, providers are not civilly liable for the content they host if they are not aware of the wrongfulness of this content; moreover, article 6.I.7, used by the associations, specifies that there is not a general obligation on the provider to monitor the content it hosts, but it has a duty as follows:

> '[...] Compte tenu de l'intérêt général attaché à la répression de l'apologie des crimes contre l'humanité, de l'incitation à la haine raciale ainsi que de la pornographie enfantine [...] elles doivent mettre en place un dispositif facilement accessible et visible permettant à toute personne de porter à leur connaissance ce type de données. Elles ont également l'obligation, d'une part, d'informer promptement les autorités publiques compétentes de toutes activités illicites mentionnées à l'alinéa précédent qui leur seraient signalées et qu'exerceraient les destinataires de leurs services, et, d'autre part, de rendre publics les moyens qu'elles consacrent à la lutte contre ces activités illicites.'
>
> '[...] Given the general interest attached to the repression of the apology of crimes against humanity, incitement to racial hatred and child pornography [...] they must establish an easily accessible and visible device for anyone to draw their attention to this type of data. They also have an obligation, on the one hand, to promptly inform the competent public authorities of all illegal activities mentioned in the preceding paragraph which are reported to them and performed by the users of their services, and, on the other hand to render public how they spend the fight against these illegal activities.'

By their letter, the associations rendered Twitter aware of the wrongfulness of the tweets, and so Twitter had to take action against them; if not, Twitter would be liable for the content of the tweets. The associations decided to seize the court of the matter due to the lack of an answer and any action from Twitter, although Twitter eventually made the tweets inaccessible.

The first instance procedure

On 29 November 2012, two French associations, the Union des Etudiants Juifs de France (UEJF) [French Jewish Students Union] and the Association J'accuse – action internationale pour la justice, decided to take legal action against Twitter in France.[4] In addition, their action was accompanied by voluntary interventions from three others associations, Le Mouvement Contre Le Racisme et pour L'Amitié Entre Les Peuples (MRAP), La ligue contre le racisme et l'antisémitisme (LICRA) and Association SOS Racisme-Touche pas a mon pote. On 20 December 2012, the same associations took another legal action, for the same reasons, against the newly created French subsidiary of Twitter, Twitter France.[5] The judge decided to join both cases, and so they will be considered together.

1 *This commentary is based on a previous blog post of the SURVEILLE FP7 project (http://www.surveille.eu). I thank Stephen Mason for his useful comments; of course, all errors are that of the author.*

2 *In French, the decision was made to translate 'hashtag' by 'mot-dièse'; see: 'Vocabulaire des télécommunications et de l'informatique (NOR: CTNX1242797K)', Journal Officiel de la République française, 19, 23 January 2013, 1515 http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=31D2C7AB2F1C537B51631A55E96447C3.tpdjo09v_3?cidTexte=JORFTEXT000026972451&dateTexte=&oldAction=rechJO&categorieLien=id.*

3 *Loi n° 2004-575 du 21 juin 2004 loi pour la confiance dans l'économie numérique.*

4 *Tribunal de Grande Instance de Paris, Ordonnance de référé, 24 janv. 2013, n° 13/50262, n° 13/50276, UEJF et a. c/Twitter Inc. et Sté Twitter France.*

5 *The company Twitter France was created on the 19 November 2012 and is incorporated in France (789305596 R.C.S. PARIS); see https://www.infogreffe.fr/societes/entreprise-societe/789305596-twitter-france-sas-750112B228780000.html.*

Before going further, it is important to note that in France, article 48-1 of the law of 29 of July 1881 on the freedom of the press,[6] as noted in the case, states that French associations may exercise rights for different kind of offence:

> 'combattre le racisme ou d'assister les victimes de discrimination fondée sur leur origine nationale, ethnique, raciale ou religieuse, peut exercer les droits reconnus à la partie civile'
>
> 'combating racism and assisting victims of discrimination based on racial or religious, national, ethnic origin, may exercise the rights granted to the civil party'

This explains why, in this case, some associations took legal action against Twitter. Moreover, it should be added that Twitter did not contest the competence of the plaintiff associations.

The associations asked primarily for two things: firstly, 'to order the company Twitter Inc. to provide them with the data listed in the decree 2011-219 of 25 February 2011 likely to enable the identification of any person who has contributed to the creation of clearly illegal tweets [...]' and secondly, 'to order the company Twitter Inc. to implement in the context of the French platform service Twitter Inc. a device easily accessible and visible to any person to bring to the knowledge of illegal content falling within the scope of defending crimes against humanity and incitement to racial hatred'.

The judge agreed with the demands of the plaintiffs and ordered 'the company Twitter Inc. to communicate with the five associations because the data in its possession is likely to enable the identification of any person who has contributed to the creation of clearly illegal tweets with URLs that include the device assignment of 29 November in 2012, made inaccessible on notification of 23 October 2012'; moreover, the judge added 'that communication must take place within fifteen days of service of this decision, and under penalty of €1,000 per day of delay after such period'. Secondly, the judge ordered 'the company Twitter Inc. to implement in the context of the French service platform Twitter Inc. a device that is easily accessible and visible to any person to bring knowledge of illegal content, including falling within the scope of the apology of crimes against humanity and incitement to racial hatred'.

To come to this decision, the first question for the judge was to determine if she was competent; and following it, the main questions were to qualify Twitter Inc. and Twitter France, their connexion with France and its territory, and the applicable law.

On the competence of the French judge, the litigious tweets had been received in France, because Twitter can be viewed everywhere in the world. Consequently, damage occurred on the French territory and so the French judge was competent.[7] In addition, it should be noted that it is specified in the case that Twitter did not dispute the jurisdiction of the French judge or the illegality of the tweets. The French judge was competent to deal with this case.

The judge examined the two demands separately. Firstly, the judge investigated the demand from the associations that Twitter should enable the identification of the authors of the tweets by transmitting the identification data it possessed.

According to the associations, Twitter and its French branch, Twitter France, should be seen as a provider with a sufficient connexion with France, notably due to the existence of Twitter France, making the French law applicable. The defendant argued that Twitter France was created only for a commercial purpose, notably marketing, and all the data are collected and stored only by Twitter in the United States, and so it cannot be seen as a provider under the French law, which meant that the French law was inapplicable.

To answer this demand, the judge started by deciding if the act of 21 June 2004 on confidence in the digital economy (LCEN) and its qualification of provider were applicable to Twitter and to the case. LCEN does not specify its spatial applicability, but the provision of article 4 of its Implementing Decree No. 2011-219 of 25 February 2011[8] provides that

> 'La conservation des données mentionnées à l'article 1er est soumise aux prescriptions de la loi du 6 janvier 1978 susvisée, notamment les prescriptions prévues à l'article 34, relatives à la sécurité des informations.'
>
> 'The retention of data referred to in article 1 shall be subject to the requirements of the law of 6 January 1978 referred to above, including the requirements set out in article 34, for information security.'

Article 2 of Law No. 78-12 of 6 January 1978[9] relating to

6 *Loi du 29 juillet 1881 sur la liberté de la presse.*

7 *Emmanuel Derieux, ' Diffusion de messages racistes sur Twitter: Obligations de l' hébergeur' , Revue Lamy droit de l' immatériel, 90 (February 2013), 27-32, 28.*

8 *Décret n° 2011-219 du 25 février 2011 relatif à la conservation et à la communication des données permettant d' identifier toute personne ayant contribué à la création d' un contenu mis en ligne.*

9 *Loi n° 78-17 du 6 janvier 1978 relative à l' informatique, aux fichiers et aux libertés.*

computers, files and freedoms accurate treatment are subject to this law 'whose controller is established on the French territory' or 'uses processing means located on French territory.' The judge followed the arguments of the defendant about the commercial purpose of Twitter France and that Twitter is incorporated in the United States and does not use the French territory for its activity; consequently, the judge declared LCEN inapplicable to the case.

Some authors find the way that the judge solved the conflict of laws not fully convincing.[10] Moreover, the plaintiffs argued that some articles of LCEN can be qualified as statutes relating to public policy and safety that would apply to a foreign company such as Twitter, and so it would have avoided the necessity to resolve the conflict of laws. It should be noted here that the notion of statutes relating to public policy and safety is controversial. However, as it was a procedure for interim relief, the judge did not go further on this question. Finally, the judge found the solution in the alternative demand of the plaintiffs on the basis of article 145 of the Code of Civil Procedure,[11] which reads:

> 'S'il existe un motif légitime de conserver ou d'établir avant tout procès la preuve de faits dont pourrait dépendre la solution d'un litige, les mesures d'instruction légalement admissibles peuvent être ordonnées à la demande de tout intéressé, sur requête ou en référé.'
>
> 'If there is a legitimate reason to preserve or to establish, before any legal process, the evidence of the facts upon which the resolution of the dispute depends, legally permissible preparatory inquiries may be ordered at the request of any interested party, by way of a petition or by way of a summary procedure.'

The present action was a procedure for interim relief. The judge justified the application of this article with three arguments: firstly, the litigious tweets are offences under French law and only Twitter could identify the persons concerned in order to initiate legal proceedings against the authors; secondly, Twitter did not contest the wrongful character of the litigious tweets; and thirdly, Twitter possessed the data due to its obligation to conserve them under Californian law. However, here the application depended on the cooperation of Twitter. If Twitter is not cooperative, the French judge would have to request the execution from a Californian judge, and the success of such demand is not certain.

The second demand investigated by the judge was for the creation of a method to identify and inform Twitter about manifestly illegal content. The main argument by the associations was the fact that 'the form in question was not available in the French language in any case on the eve of the hearing', however Twitter produced a form on the day of the hearing. The judge followed the plaintiffs, and recognised that the form produced by Twitter was not sufficiently visible and accessible. However, as Twitter agreed on the necessity of such form, the judge did not go further and just asked Twitter to make the form more visible. Here again, the implementation of the decision depended on the cooperation of Twitter.

The appeal by Twitter

On 21 March 2013, Twitter decided to appeal the first instance decision.[12] From the first instance decision, Twitter had to comply with two obligations, firstly, to communicate data that would enable the identification of the authors of the illegal tweets; and secondly, to establish a method to identify and inform Twitter about manifestly illegal content.

Regarding the obligation to communicate data that would enable the identification of the authors of illegal tweets, Twitter recognized that it possessed the data, but refused to communicate it for two reasons: firstly, Twitter justified its decision not to transmit the data by the fact that it would be an irreversible act without a possible appeal for the users concerned. Secondly, Twitter restated, as it did in the first instance hearing, that it is committed to provide the data for the identification of the authors of tweets exclusively in connection with an international rogatory commission respecting the provisions of international conventions ratified by France and the United States. For the judge of appeal, this was not sufficient to justify the refusal of Twitter to communicate the data, because Twitter failed to comply with the decision that it had appealed against (article 526 of the Code of Civil Procedure), which meant it could not appeal on a point that it failed to comply with.

Regarding the second obligation, the day after the first instance judgment, Twitter had implemented a method to identify and inform Twitter about manifestly illegal content in French. However, l'UEJF, as well as the judge of appeal, considered that this new procedure was not visible enough for users. The process of identifying illegal

10 Anne Cousin, ' Twitter peut-elle échapper à la loi française ?' , Recueil Dalloz (2013), 696.

11 Code de procédure civile.

12 Cour d' Appel de Paris, 12 June 2013, Twitter Inc. et Twitter France c/ UEJF et a.

content is described in the judgment; the main criticism from both the UEJF and the judge was the fact that signalling illegal content was not possible from the main page, and the user had to pass through the help centre of Twitter and obtain access to more pages before signalling the illegal content.

As a consequence, the judge of appeal concluded that Twitter had not complied with the two obligations arising from the first instance decision, and the judge of appeal decided to strike out the appeal formed by Twitter. To do so, the French judge used the provisions of article 526 of the French Code of Civil Procedure, which allows the judge to strike out the appeal when the appellant does not justify the reason of his failure to execute the appealed decision.

Developments related to and following the trial

Since the beginning of this case, in addition to its legal side, there was a significant political side. Fleur Pellerin, the French Minister for the Digital Economy, declared that Twitter must conform to the European legal system and human rights.[13] Najat Vallaud-Belkacem, the French Minister of Women's Rights and Government spokesperson, published an opinion column in the French newspaper Le Monde where she asked Twitter to find a way to control users' publications with racist or homophobic content, and warned Twitter against future possible legal action in France or in Europe.[14] The French government organised a meeting with Twitter and the associations that respond to racism and homophobia.[15] Following this meeting, on 17 May 2013, Najat Vallaud-Belkacem announced on her Twitter account that the association SOS Homophobie had been granted a specific Twitter account, allowing it to signal illegal tweets.[16]

Some noted that Twitter seems to have been much more receptive and cooperative than other internet companies in previous cases, even if some other internet companies found a solution with the French associations without going to court. [17] Finally, the on 12 July 2013, Twitter announced that it would cooperate with the French court and provide the required identification data.[18]

However, the anonymity and impunity of the users of Twitter for the content of their tweets was not only criticised in France but also in several other countries. Notably in the United Kingdom, where some women in the public eye received bomb threats and rape threats on their Twitter accounts.[19] In the following days, a debate occurred in the UK, and more than 127,000 people signed a petition calling Twitter to add a 'report abuse' button.[20] Finally, on 3 August 2013, Twitter announced on its UK blog (http://blog.uk.twitter.com) of a number changes, notably the introduction of an 'in-Tweet report button'; this 'in-Tweet report button' is already available for IOS and '[s]tarting next month, this button will also be available in our Android app and on Twitter.com.'[21]

Conclusion

The creation of the 'in-Tweet report button' was one of the demands of the French associations in the Twitter case. It can be assumed that, in addition to what happened in the UK, the French litigation had probably also contributed to raising awareness with Twitter on the necessity of including such a button.

As a result, Twitter has now complied with the two obligations arising from the French Twitter case.

As will be observed, all the outcome of the case depended on the willingness of Twitter to comply; indeed, the compliance of Twitter was not the result of a judicial decision, but of pressure of public opinion. Consequently,

13 *Eric Pfanner and David Jolly, 'Pushing France Onto the Digital Stage', The New York Times, 16 January 2013, available at http://www.nytimes.com/2013/01/17/technology/17iht-pellerin17.html?pagewanted=all&_r=1&.*

14 *Najat Vallaud-Belkacem, 'Twitter doit respecter les valeurs de la République', Le Monde, 28 December 2012, available at http://www.lemonde.fr/idees/article/2012/12/28/twitter-doit-respecter-les-valeurs-de-la-republique_1811161_3232.html.*

15 *LeMonde.fr, 'La justice française ordonne à Twitter d'aider à identifier les auteurs de tweets litigieux', LeMonde.fr, 24 January 2013, available at http://www.lemonde.fr/technologies/article/2013/01/24/la-justice-francaise-ordonne-a-twitter-d-aider-a-identifier-les-auteurs-de-tweets-litigieux_1822165_651865.html.*

16 *The announcement of Najat Vallaud-Belkacem (@najatvb) was done in two tweets posted on the 17 May 2013: https://twitter.com/najatvb/status/335402195711320064 and https://twitter.com/najatvb/status/335402423399100416; see also Cedric Manara, 'Twitter: validité du dispositif de signalement de contenus illicites', Dalloz actualité (2013), 1614.*

17 *Anne Cousin, 'Twitter peut-elle échapper à la loi française ?'; France24, 'Twitter accepte de livrer des données à la justice française', France 24, 12 July 2013, available at http://www.france24.com/fr/20130712-tweets-racistes-twitter-accepte-livrer-noms-donnees-a-justice-francaise/.*

18 *France 24, 'Twitter accepte de livrer des données à la justice française', France 24, 12 July 2013, available at http://www.france24.com/fr/20130712-tweets-racistes-twitter-accepte-livrer-noms-donnees-a-justice-francaise; Znet.fr, 'Tweets antisémites: Twitter accepte de transmettre ses données à la justice', Znet.fr, 12 July 2013, available at http://www.zdnet.fr/actualites/tweets-antisemites-twitter-accepte-de-transmettre-ses-donnees-a-la-justice-39792385.htm.*

19 *'Twitter' s Tony Wang issues apology to abuse victims', BBC News UK, 3 August 2013, available at http://www.bbc.co.uk/news/uk-23559605.*

20 *The petition is accessible by following this link: http://www.change.org/en-GB/petitions/twitter-add-a-report-abuse-button-to-tweets.*

21 *The blog post is accessible by following this link: http://blog.uk.twitter.com/2013/08/our-commitment.html.*

the application of the French law appears to depend on the goodwill of the foreign provider, or in case of a legal procedure, on the goodwill of the authorities of the host country of the company. Moreover, it should be noted that the French decision concern only two hashtags: *#Unbonjuif* and *#unjuifmort,* two others were not determined by the judge in the case,[22] and so the abusive comments relating to other hashtags and their contents was left to the goodwill of Twitter. In case of disagreement with Twitter, a new trial would be necessary.

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22 *The two hashtags were #simonfilsestgay [if my son is gay] and #simafilleramèneunnoir [if my daughter brings a black man].*